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ex parte

March 2, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20054

MAR - 2 1998

Re: CC Docket Nos. 92-237 (*Administration of the North American
Numbering Plan*) and 95-155 (*Toll Free Service Access Codes*)

Dear Ms. Salas:

Gay Information Network ("GIN")¹ respectfully urges the Federal Communications Commission ("FCC") to deny to users of 800 vanity telephone numbers any rights to equivalent numbers in the 888 Service Access Code ("SAC"), or relief codes. All toll free numbers should be available to any subscriber on a first-come, first-served basis.

Pending before the FCC in the above-captioned dockets is the issue of toll free, vanity telephone numbers. Vanity numbers are telephone numbers "for which the letters associated with the number's digits on a telephone handset spell a name or word of value to the number holder."² Despite the clear ruling of the FCC that telephone numbers are a public resource that does not belong to any party,³ the *Toll Free NPRM* sought comment on whether users of 800 vanity numbers should be given the right of first refusal for the

¹ Gay Information Network, a subsidiary of Tri-Con Consulting, Inc., is specialty marketing firm based in Palm Springs, California.

² *Toll Free Service Access Codes*, Notice of Proposed Rulemaking, 10 FCC Rcd. 13692, 13701-02 (1995) ("*Toll Free NPRM*").

³ *Administration of the North American Numbering Plan*, 11 FCC Rcd. 2588 (1995) ("*NANP Order*").

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equivalent 888 or subsequent toll free SACs.⁴ Early in 1996, the FCC made an initial determination of how to handle vanity numbers for the opening of the 888 SAC. The Commission decided that, pending a final decision on vanity numbers, subscribers who sought replication of their 800 vanity number in the 888 SAC, would have such number protected “temporarily.” The FCC ordered that those protected numbers not be made available for assignment to other parties.⁵ In 1997, the FCC issued a *Second Report*,⁶ but did not address the vanity number issue. Accordingly, many 888 numbers remain unavailable today even though an additional toll free SAC, 877, is being opened to meet demand for toll free numbers.

GIN has developed a service that enables people to locate gay-friendly businesses by category, throughout the United States by calling a single, toll free telephone number. The caller will reach a GIN employee who will provide information about businesses listed in GIN’s database for the city desired.⁷ GIN has sought to obtain the telephone number (429-4636), which corresponds to “GAY-INFO,” in the 800 and 888 toll free SACs. However, the toll free number 800-429-4636 is being used by a travel agency as a vanity number.⁸ The equivalent 888 telephone number is not available to GIN because of the *First Report*’s direction to protect such vanity numbers “temporarily.” Accordingly, the number 888-429-4636 is not a working number today. Callers dialing it will hear a recorded message that the number is not in service.

Because GIN cannot use the telephone number 888-429-4636, GIN has been forced to use a poor substitute, 888-429-4630 (888-GAY-INFØ). The results have been negative. Callers, believing they are using a service called 888-GAY-INFO, often misdial and reach 888-429-4636 and hear a recorded message indicating the number is not working. Many of these callers then assume that GIN’s service has ended, or that GIN is no longer in business. Similarly, GIN has received numerous complaints from its business advertisers, who are not receiving the number of referrals expected from GIN’s service.

⁴ *Toll Free NPRM*, *id.* at 13703. Other ways to protect users of 800 vanity numbers were proposed as well.

⁵ *Toll Free Service Access Codes*, Report and Order, 11 FCC Rcd. 2496 (1996) (“*First Report*”).

⁶ *Toll Free Service Access Codes*, Second Report and Order, 7 Comm. Rep. (P&F) 559 (1997) (“*Second Report*”).

⁷ For example, a person may want information on bookstores in Chicago. GIN’s database has information about bookstores that are gay friendly in the Chicago area and that want to be listed in GIN’s database for a fee. There is no charge to the calling party.

⁸ It is important to note that the user of 800-429-4636 is not associating that number with the phrase “GAY-INFO.” GIN’s attempted use of 429-4636 as a toll free number is unique.

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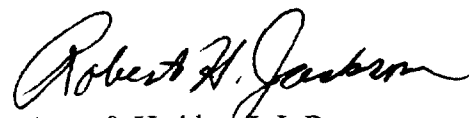
Some advertisers have canceled contracts with GIN. GIN's business has suffered dramatically because of the inability to obtain the 888-429-4636 -- a number no one else is using.

GIN urges the FCC to deny any special rights to users of 800 vanity numbers and to remove the temporary hold on the assignment of certain 888 numbers. There are simply no good reasons to allow some subscribers to 800 toll free service special rights to 888, 877 or other future toll free numbers. The phrase GIN wants to market with its desired vanity number, 888-GAY-INFO, is not replicating any vanity advertising conducted by the current user of the 800 number. Callers seeking the travel agency are not going to be confused by GIN's marketing of its referral service. Moreover, any potential confusion among the general public between 800 and 888 numbers has long since dissipated. The 888 SAC was opened almost two years ago -- March 1, 1996. Callers are now aware that there are two (soon to be three) toll free SACs.

Giving special rights to 888 or 877 numbers to users of 800 vanity numbers wastes a scarce resource. These two SACs will exhaust more rapidly if some numbers are not available. Also, some numbers simply remain unusable -- 888-429-4636 sits idle today. In addition, granting special rights to 888 numbers stifles creativity. GIN developed a new use for the 888-429-4636 number, which does not impinge on the use made of the 800-429-4636 number. Yet, GIN cannot take advantage of its new marketing idea because of the FCC's orders. As discussed above, GIN's attempt to use a poor substitute (888-429-4630) is failing. GIN's business is in jeopardy because it cannot use 429-4636 as a toll free telephone number. The public interest is not served by stifling business inventiveness and creating governmental barriers to business success. The FCC should make its decision concerning toll free vanity numbers immediately, and deny users of 800 vanity telephone numbers any rights to the equivalent numbers in the 888 or future relief codes. All toll free numbers should be available to any subscriber on a first-come, first-served basis.

Please place a copy of this letter in the record in the above-captioned proceedings. Acknowledgment and date of receipt of this letter are requested. A duplicate letter is attached for this purpose.

Very truly yours,



Arter & Hadden, L.L.P.

by Robert H. Jackson

on behalf of

Gay Information Network